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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re A.S. et al., Persons Coming Under
the Juvenile Court Law.

C061995

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

(Super. Ct. Nos.
JD229031, JD229032)

Plaintiff and Respondent,

v.

M.S.,

Defendant and Appellant.

Appellant, the mother of the minors, appeals from the juvenile court's jurisdictional and dispositional orders. (Welf. & Inst. Code, §§ 360, subd. (d), 395; all further statutory references are to the Welfare and Institutions Code unless otherwise indicated.) Appellant claims there was insufficient evidence to support removal of the minors. Concluding this claim lacks merit, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2009 juvenile dependency petitions were filed by the Sacramento County Department of Health and Human Services

(Department) concerning the minors—15-year-old S.S. and 14-year-old A.S.—which, as later amended, alleged that appellant and the minors' father had a history of engaging in domestic violence, with the most recent incident occurring in the minors' presence. According to the petitions, appellant had failed to take reasonable measures to protect the minors from this conduct in that she refused to press criminal charges against the father and continued to allow him to live in the home, despite the existence of a court order prohibiting him from having contact with her.

Appellant had suffered a brain aneurysm in 2003 and seemed to have "significant difficulty understanding, processing or retaining the information provided to her." She "also presented as depressed, withdrawn and defeated." She explained that she had no support from her relatives because they were "tired of hearing from her and no longer want[ed] to be involved in her problems."

The family had two prior CPS referrals. In 2005 appellant moved out with the minors because the father had been threatening to kill her and slept with knives under his pillow, and on an earlier occasion the father had attempted to choke appellant in the presence of the minors. In March 2008 the father pushed appellant to the ground and "cussed" at S.S. At the time of the second referral, S.S. reported that the father "'always hits'" appellant and had hit S.S. in the past as well. The father was charged with assault and child endangerment following this episode, but appellant did not want to speak with

a domestic violence advocate at his arraignment and left the hearing with the father.

An informal supervision case was opened on the family after the March 2008 incident. Appellant completed domestic violence counseling in October 2008, but the father did not complete the "batterers['] class" he had been requested to attend. The family maintenance case was closed in November 2008.

The father had four domestic violence-related battery convictions, as well as a vandalism conviction. He was arrested again following the incident leading to the filing of the petitions. In addition, appellant reported that the father had "significant mental health issues." According to a family maintenance social worker, the father had been diagnosed with paranoid schizophrenia and had been placed on psychiatric holds several times since 2002.

The minors remained placed with appellant while the father was in custody, even though appellant had reported that she did not want to end her marriage to the father and would not abide by an "Order of Protection." A month and a half after the incident leading to the filing of the petitions, appellant stated she intended to allow the father to return to her home upon his release. The father had a history of being violent after being released from custody, and he did not have his medication with him during his most recent incarceration. The social worker made several attempts to interview the father while he was in custody, but he did not contact the social

worker as arranged. A.S. was convinced that, as soon as the father was released, "'it will start all over.'"

During a court appearance in the dependency matters in February 2009 the father, who was still in custody, stated he planned to return to appellant's residence upon his release. The Department's request for a protective custody warrant to remove the minors from appellant was granted.

At a hearing in March 2009 appellant's attorney informed the court that the father was no longer living with appellant and that appellant had an appointment to meet with her to discuss getting a restraining order. The minors' attorney reported that the minors wanted to return to appellant's home, although the attorney opposed this. The juvenile court ordered the minors to be detained.

Soon after, appellant filed an application for a restraining order against the father, which was granted. The restraining order prohibited the father from having any contact with appellant or the minors, including by telephone.

In April 2009 the juvenile court sustained the allegations in the petitions and continued the matters for a dispositional hearing.

In May 2009 the social worker reported that appellant was participating in services, including individual counseling for domestic violence and other issues, but it was difficult for the counselor to measure whether appellant was "absorbing the information." The father was not compliant with services and

had not been visiting the minors. He previously admitted he was not taking his medication.

At the dispositional hearing, the social worker testified that, a few weeks earlier, the father had informed her he was having regular telephone contact with appellant. According to the social worker, appellant's family members were concerned that she isolated herself and did not want help or intervention from them. The social worker acknowledged that the minors wanted to be returned to appellant's care and that they felt they would be safe with her. The minors' testimony confirmed this, and they also testified they would call the police if the father came to the home.

The juvenile court ordered out-of-home placement, noting its concern that appellant was having telephone contact with the father despite the restraining order. The court stated it was not satisfied by the minors' testimony that they would be safe in appellant's home.

DISCUSSION

Appellant claims there was insufficient evidence at the time of the dispositional hearing to warrant removal of the minors. We disagree.

Section 361, subdivision (c)(1) provides, in relevant part: "A dependent child may not be taken from the physical custody of his or her parents . . . unless the juvenile court finds clear and convincing evidence [that] [¶] . . . [t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if

the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody."

Removal findings are reviewed under the substantial evidence test, drawing all reasonable inferences to support the findings and recognizing that issues of credibility are matters for the juvenile court. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) In this regard, evidence of past conduct is probative of current conditions, particularly where there is reason to believe that the conduct will continue in the future. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

Appellant contends removal was improper because, by the time of the dispositional hearing, the father had moved out of her home and she had obtained a restraining order against him.

It is undisputed that based on the father's history of domestic violence, unmonitored contact with him posed a substantial danger to the minors' physical and emotional well-being. The father's noncompliance with services and psychiatric treatment exacerbated this threat. Nonetheless, prior to the father's release, appellant intended to allow him to return to the residence and stated she would not abide by a restraining order, even though she recently had completed a domestic violence program.

Although appellant subsequently applied for a restraining order, the father and she were violating the order by having telephone contact, and appellant had a history of ignoring

protective orders concerning the father. The social worker felt that appellant's disability made it difficult for her to evaluate the father's sincerity, and appellant's current counselor could not determine whether appellant was assimilating the information imparted during their sessions. Appellant and the father had a lengthy history of domestic violence, and appellant repeatedly had demonstrated an inability to protect herself and the minors. Under these circumstances, there was substantial evidence supporting the juvenile court's conclusion that appellant could not be relied on to enforce the restraining order against the father.

Appellant also argues the juvenile court should have considered less drastic alternatives than removal, such as periodically interviewing the minors or having someone from the Department "regularly drop[] by" to confirm the father was not living there or visiting. She compares her circumstances to those in *In re Jeannette S.* (1979) 94 Cal.App.3d 52, a dirty house case in which the appellate court reversed the juvenile court's removal order because alternatives such as intensive supervision, removal of some of the animals in the home, and homemaker assistance services were available to assist the parent in maintaining the condition of the home.

However, a dirty home is readily subject to monitoring with unannounced visits because, unlike the presence of an individual, it is an ongoing situation and cannot be easily concealed. Having a social worker regularly come by appellant's residence would not adequately safeguard against the risk of the

father making unauthorized visits. We also conclude that the court's unwillingness to place the burden on the minors of reporting their parents in the event appellant permitted the father to visit the residence was reasonable.

DISPOSITION

The judgments are affirmed.

RAYE, J.

We concur:

BLEASE, Acting P. J.

BUTZ, J.